

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD OF TN MEMPHIS

ELLIPSIS, INC.,)
)
 Plaintiff,)
)
 vs.) No. 03-2939-BV
)
 THE COLOR WORKS, INC.,)
)
 Defendants.)
)
)
 THE COLOR WORKS, INC.,)
)
 Third-Party Plaintiff)
)
 v.)
)
 MARY ELIZABETH WADE,)
 a/k/a Elizabeth Wade,)
 Individually,)
)
 Third-Party Defendant)

ORDER DENYING PLAINTIFF'S AND THIRD-PARTY
DEFENDANT'S MOTION TO COMPEL

Before the court is the August 5, 2005 motion of the plaintiff, Ellipsis, Inc., and Third-Party Defendant Mary Elizabeth Wade, a/k/a Elizabeth Wade, pursuant to Federal Rule of Civil Procedure 37(a)(2)(B), to compel additional responses to its Second Set of Interrogatories and Second Request for Production of Documents. This motion has been referred to the United States Magistrate Judge for determination. The request to compel

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with Rule 58 and/or 79(a) FRCP on 8-17-05

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additional discovery was a part of a motion that also requested that the court enter an order extending the deadlines of the scheduling order. The court entered an order on that motion on August 10, 2005. Therefore, the court only addresses the motion to compel in this order. For the following reasons, the motion to compel is denied.

In this motion, Ellipsis, Inc. and Wade submit that the answers to interrogatories Nos. 13, 14, 15, 17, 19 and 21 and responses to requests for documents Nos. 33, 34, 35, 36, 37, 38, 39, 40, 45, 47, 48, 49, 51, 52, 53, 56, 57, 58, 59, 60, 61, and 63 are unsatisfactory. The parties claim that without proper responses to these requests, it will not be able to prosecute or defend its case as the information requested relates specifically to the issues present in this case.

Rule 26 of the Federal Rules of Civil Procedure, which governs discovery, only applies to documents in possession of the defendant. The defendant, The Color Works, Inc., has averred that it has produced all non-privileged documents that are responsive to Ellipsis' and Wade's Second Request for Production of Documents that it has in its possession.

Furthermore, after reviewing the interrogatories that have been propounded by the plaintiffs, along with the defendant's responses, the court finds that the information provided by The

Color Works, Inc., is sufficient and that its objections to certain requests are legitimate. Accordingly, Ellipsis' and Wade's motion to compel further responses to its discovery requests is denied.

IT IS SO ORDERED this 16th day of August, 2005.


DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 165 in case 2:03-CV-02939 was distributed by fax, mail, or direct printing on August 18, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT